

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

ORDER OF THE SUPERVISOR OF WELLS

IN THE MATTER OF:

THE PETITION OF O.I.L. ENERGY CORP. FOR AN)	
ORDER OF THE SUPERVISOR APPROVING A)	
UNIFORM SPACING PLAN AND COMPULSORY)	ORDER NO. (A) 14-5-97
POOLING INTERESTS, IN PARTS OF JORDAN)	
TOWNSHIP, ANTRIM COUNTY, MICHIGAN.)	

SECOND AMENDED OPINION AND ORDER

at a session of the Department of Environmental Quality held at Lansing,
Michigan, Harold R. Fitch, Assistant Supervisor of Wells, Presiding

On December 11, 2008, Petitioner, Atlas Energy Resources, LLC (Atlas), filed a Motion To Amend Order No. (A) 14-5-97 to expand a Uniform Spacing Plan (USP). Order No. (A) 14-5-97, dated August 22, 1997: 1) established a 2,440-acre USP (Jordan 35 USP) as described therein; 2) appointed O.I.L. Energy Corp. as Operator of the USP; and 3) compulsory pooled all properties, parts of properties, and interests in the established USP. To date, 21 wells have been drilled within the Jordan 35 USP. Atlas, by virtue of assignments, mergers, and acquisitions, presently owns the oil and gas leases in the Jordan 35 USP.

Order No. (A) 14-5-97 was amended on February 4, 2009, to expand the Jordan 35 USP to include approximately 640 acres of State of Michigan owned lands within the NE 1/4, N 1/2 of SE 1/4, and W 1/2 of SW 1/4 of Section 24; and the SW 1/4 and SE 1/4 of Section 25, Jordan Township, Antrim County, and to appoint Atlas as operator of the USP.

By letter dated March 10, 2009, Petitioner requests the Order be amended again to appoint Atlas, the permittee of record for wells in the USP, as operator of the USP. Atlas is the parent company of Atlas Gas & Oil Company, LLC. In addition, a typographical error in the township number was discovered after the amended order was issued.

DETERMINATION AND ORDER

I have reviewed the request by the Petitioner, and have determined Order No. (A) 14-5-97 and the Amended Opinion and Order No. (A) 14-5-97 should be amended.

NOW, THEREFORE, IT IS ORDERED:

The following paragraphs of the original Determination and Order, Opinion and Order, Order No. (A) 14-5-97, and the Amended Opinion and Order No. (A) 14-5-97, are amended to provide as follows:

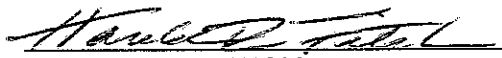
1. The Uniform Spacing Plan established by Order No. (A) 14-5-97 is amended to include the following lands:

Section 13: SW 1/4 of SW 1/4;
Section 14: SW 1/4;
Section 23: all;
Section 24: NW 1/4; NE 1/4; N 1/2 of SE 1/4; W 1/2 of SW 1/4;
Section 25: NW 1/4; SW 1/4; SE 1/4;
Section 26: all;
Section 35: all;
T31N, R6W, Jordan Township, Antrim County, Michigan.

2. Atlas Gas & Oil Company, LLC is appointed as operator of the USP and shall have control of all operations in the USP.

All other provisions of the original Order No. (A) 14-5-97 and the Amended Order No. (A) 14-5-97 are reaffirmed.

Dated: Mar. 12, 2009


HAROLD R. FITCH
ASSISTANT SUPERVISOR OF WELLS
Office of Geological Survey
P.O. Box 30256
Lansing, MI 48909



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

February 9, 2009

TO WHOM IT MAY CONCERN:

SUBJECT: AMENDED OPINION AND ORDER NO. (A) 14-5-97

Please be advised that a typographical error was made in the legal description of the amended USP in paragraph 1, page 2, of the above referenced Amended Opinion and Order signed on February 4, 2009. The Township # was incorrectly identified as **T35N**. The correct Township # is **T31N**. All other parts of the description of the amended USP in paragraph 1, page 2 of the Amended Opinion and Order are correct.

Should you have any questions, please advise.

Sincerely,

Susan S. Maul
Administrative Hearings Specialist
Office of Geological Survey
517-241-1552

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

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AMENDED OPINION AND ORDER

at a session of the Department of Environmental Quality held at Lansing,
Michigan, Harold R. Fitch, Assistant Supervisor of Wells, Presiding

On December 11, 2008, Petitioner, Atlas Energy Resources, LLC (Atlas), filed a Motion To Amend Order No. (A) 14-5-97 to expand a Uniform Spacing Plan (USP). Order No. (A) 14-5-97, dated August 22, 1997: 1) established a 2,440-acre USP (Jordan 35 USP) as described therein; 2) appointed O.I.L. Energy Corp. as Operator of the USP; and 3) compulsory pooled all properties, parts of properties, and interests in the established USP. To date, 21 wells have been drilled within the Jordan 35 USP. Atlas, by virtue of assignments, mergers, and acquisitions, presently owns the oil and gas leases in the Jordan 35 USP.

This Motion to Amend Order No. (A) 14-5-97 requests that the Supervisor of Wells (Supervisor) expand the Jordan 35 USP to include approximately 640 acres of State of Michigan owned lands within the NE 1/4, N 1/2 of SE 1/4, and W 1/2 of SW 1/4 of Section 24; and the SW 1/4 and SE 1/4 of Section 25, Jordan Township, Antrim County. The Michigan Department of Natural Resources (MDNR) has verbally agreed to the inclusion of this acreage into the amended USP and a Ratification of an Amended Jordan 35 USP will be filed with the Supervisor once it is executed by the MDNR. Petitioner proposes to drill five additional wells (four directional and one vertical) resulting in a well density of 118.5 acres per well.

At the request of the Supervisor, Petitioner served notice, by first-class mail, of its motion on all unleased parties in the USP. The unleased parties were given an opportunity to comment on the motion; however, no comments were received.

DETERMINATION AND ORDER

I have reviewed the motion by the Petitioner, and have determined Order No. (A) 14-5-97 should be amended.

NOW, THEREFORE, IT IS ORDERED:

The following Paragraphs of the original Determination and Order, Opinion and Order, Order No. (A) 14-5-97, is amended to provide as follows:

1. The Uniform Spacing Plan established by Order No. (A) 14-5-97 is amended to include the following lands:

Section 13: SW 1/4 of SW 1/4;
Section 14: SW 1/4;
Section 23: all;
Section 24: NW 1/4; NE 1/4; N 1/2 of SE 1/4; W 1/2 of SW 1/4;
Section 25: NW 1/4; SW 1/4; SE 1/4;
Section 26: all;
Section 35: all;
T35N, R6W, Jordan Township, Antrim County, Michigan.

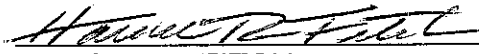
2. Atlas Energy Resources, LLC is appointed as operator of the USP and shall have control of all operations in the USP.

The following Paragraph of the original Determination and Order, Opinion and Order, Order No. (A) 14-5-97, is added to provide as follows:

15. If within two years from the date of this amendment to Order No. (A) 14-5-97 the A4-24 HD, D1-24 HD, C4-25 HD, and D2-25 HD proposed wells have not been drilled, then this amendment of the Jordan 35 USP shall terminate upon receipt of written notice from the Supervisor of Wells.

All other provisions of the original Order No. (A) 14-5-97 are reaffirmed.

Dated: Feb. 4, 2009


HAROLD R. FITCH
ASSISTANT SUPERVISOR OF WELLS
Office of Geological Survey
P.O. Box 30256
Lansing, MI 48909

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

ORDER OF THE SUPERVISOR OF WELLS

IN THE MATTER OF

THE PETITION OF O.I.L. ENERGY CORP.)	
FOR AN ORDER OF THE SUPERVISOR)	
APPROVING A UNIFORM SPACING PLAN AND)	ORDER NO. (A) 14-5-97
COMPULSORY POOLING INTERESTS, IN PARTS)	
OF JORDAN TOWNSHIP, ANTRIM COUNTY,)	
MICHIGAN.)	

OPINION AND ORDER

On May 7, 1997, a contested case hearing was held before the Supervisor of Wells (Supervisor) pursuant to Part 615, Supervisor of Wells, Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); MCL 324.61501, et seq., the administrative rules, 1996 MR 9, R 324.101 et seq., and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.210 et seq., MSA 3.560(101) et seq. The purpose of the hearing was to consider the Petition of O.I.L. Energy Corp. (Petitioner) requesting the approval of a proposed Uniform Spacing Plan (USP) for production from the Antrim Shale Formation (Antrim) pursuant to the applicable spacing order, Order No. (A) 14-9-94, and the compulsory pooling of all unleased interests in the USP.

FINDINGS OF FACT

1. By Petition dated March 5, 1997, Petitioner requests the Supervisor to establish a USP of 2,760 acres. At the hearing, the Petitioner amended its Petition to remove three (3) 40-acre quarter-quarter sections: the NW 1/4 of NE 1/4; the SW 1/4 of SE 1/4; and the SE 1/4 of SW 1/4, all in Section 24, T31N, R6W, Jordan Township, Antrim County. The proposed USP, as amended, contains 2,640 acres, consisting of the real estate described as:

SE 1/4, and SW 1/4 of the SW 1/4 of Section 13; SW 1/4, Section 14; all of Section 23; NW 1/4, and SE 1/4 of SE 1/4 of Section 24; NW 1/4, Section 25; all of

Section 26; and all of Section 35, T31N, R6W, Jordan Township, Antrim County, Michigan (referred to hereinafter as the proposed USP).

Petitioner asks that it be named operator of the proposed USP. Petitioner also requests that all tracts and minerals and unleased interests be pooled into the proposed USP.

2. The Department of Natural Resources (DNR), Real Estate Division, filed the only answer in this proceeding. The State of Michigan holds title to eighty (80) acres of unleased lands within the boundary of the requested USP area as originally described in the Petition. The DNR's unleased interests are described as the SW 1/4 of SE 1/4 and the NW 1/4 of NE 1/4 of Section 24. The DNR's answer stated its opposition to having such unleased interests compulsory pooled into the originally requested USP area. The DNR did not object to other state mineral interests, currently under oil and gas lease to the Petitioner, being included in the proposed USP. The Petitioner voluntarily removed the DNR's unleased interests from the proposed USP.

USPs are formed pursuant to and consistent with Order No. (A) 14-9-94. One of the requirements of a USP is set forth in Section 3A, Determination and Order, of Order No. (A) 14-9-94:

"The proposed USP is formed by combining blocks of governmental surveyed quarter-quarter sections of land with one common boundary of approximately 1,320 feet with allowances being made for the differences in the size and shape of sections as indicated by official governmental survey plats."

Deletion of the DNR's unleased minerals results in the amended proposed USP not meeting the requirements in Section 3A, Determination and Order, of Order No. (A) 14-9-94 because the SE 1/4 of Section 13 and the SE 1/4 of SE 1/4 of Section 24 will not share one common boundary of approximately 1,320 feet with other lands in the proposed USP. Petitioner has leases and adequate pooling agreements in the SE 1/4 of Section 13 and the SE 1/4 of SE 1/4 of Section 24, and desires to include such tracts in the proposed USP area.

Petitioner asks that the Supervisor accept the amended Petition and establish the proposed USP as an exception to the 1,320 foot common boundary requirement of Order No. (A) 14-9-94. The DNR, through its counsel, did not object to the amendment of the Petition or to the establishment of the proposed USP as an exception to the 1,320 foot common boundary requirement.

In connection with amending its Petition, the Petitioner states that the SE 1/4 of SW 1/4 of Section 24 is owned privately and is not subject to an oil and gas lease. Petitioner's landman testified the owners thereof have consistently expressed their opposition to leasing. Petitioner included the SE 1/4 of SW 1/4 of Section 24 in the original USP description in order to comply with the 1,320 foot requirement as to the S 1/2 of SE 1/4 of Section 24. There is no reason to include the SE 1/4 of SW 1/4 of Section 24 in the proposed USP if the SW 1/4 of SE 1/4 of Section 24 is deleted from the proposed USP. Section 4F, Determination and Order, of Order No. (A) 14-9-94 provides that:

"Changes to a USP boundary shall require written approval by the Supervisor,"

and Section 8, Determination and Order, of Order No. (A) 14-9-94 provides that:

"Exceptions to the spacing and location requirements of this Order may be granted after notice and hearing."

The amendment to the original USP description has the effect of decreasing the size of the proposed USP. The Notice of Hearing for this proceeding stated the Supervisor would conduct a public hearing to consider adoption of a USP. The Notice of Hearing as published and mailed was of sufficient scope to cover the proposed USP area.

3. Petitioner's engineer testified:

- a. Seventeen (17) Antrim wells have been drilled within the boundary of the proposed USP, all of which penetrated productive intervals of Antrim.
- b. All of the lands in the proposed USP are underlain by productive Antrim. No party presented evidence contrary to Petitioner's statements regarding the appropriate boundary of the proposed USP, nor to the assertion that all of the lands within the proposed USP are capable of Antrim production.

I find the proposed USP is comprised of 40-acre building blocks, all of which are contiguous (except as discussed in paragraph 2, Findings of Fact), and underlain by Antrim which is known to be capable of gas production, or is reasonably likely to be capable of gas production.

4. Petitioner's engineer testified as to the development plan and boundary of the proposed USP:

a. Petitioner intends to drill one Antrim well in the SE 1/4 of Section 13. Production from that well will be piped to a separate Antrim gas project to the north, where gas from the well will be metered separately and allocated back to the proposed USP.

b. Petitioner does not have rights or agreements to provide for surface access via adjoining parcels to the SE 1/4 of SE 1/4 of Section 24. A well drilled on the tract could not be produced. The tract could not be reasonably drained by an existing or future well in the proposed USP.

c. Petitioner will drill an additional well in the NE 1/4 of the NW 1/4 of Section 25.

d. With the exception of the SE 1/4 of SE 1/4 of Section 24, lands in the proposed USP can be efficiently drained by existing and proposed wells.

e. All of the seventeen (17) existing and two (2) planned Antrim wells are at least 330 feet from the proposed USP boundary. All planned and existing wells are located at least 1,320 feet from the nearest well, except the Malpas D2-35 and D3-35 wells are approximately 1,089 feet apart. The wells were drilled at legal locations on 40-acre drilling units before the effective date of Order No. (A) 14-9-94. Petitioner requests an exception to the 1,320 foot requirement for the distance between wells within a USP.

f. The proposed USP contains 2,640 acres, resulting in a well density of one well per 155 acres based on seventeen (17) existing wells.

I find the SE 1/4 of Section 13 can be developed as:

(i) An independent 160-acre voluntarily-pooled unit pursuant to R 324.303, with a single well drilled at a location at least 330 feet from the boundary of the pooled area, or

(ii) Two 80-acre units pursuant to the provisions of Order No. (A) 14-9-94.

I find Petitioner did not provide adequate and convincing evidence to support an exception to the 1,320 foot common boundary requirement of Order

No. (A) 14-9-94 and the SE 1/4 of Section 13 should not be included in the proposed USP.

I find the SE 1/4 of SE 1/4 of Section 24 cannot be drained by existing or proposed wells, and should not be included in the proposed USP.

5. If the area of the proposed USP is reduced by exclusion of the SE 1/4 of Section 13 and the SE 1/4 of SE 1/4 of Section 24, the resulting USP contains 2,440 acres. This results in a well density of one well per 136 acres based on seventeen (17) existing gas wells and one planned gas well. In Order No. (A) 14-9-94, the Supervisor found that economics and reservoir drainage are generally optimized with a well density of between 80 and 160 acres per well. The Supervisor also found the maximum well density for a USP should be one well per 80 acres.

I find the locations of existing and planned wells in the proposed USP area prevent waste and afford each owner the opportunity to recover his or her just and equitable share of production from the USP, provided the SE 1/4 of SE 1/4 of Section 24 is excluded from the USP. I find the amended proposed USP area, with the exclusion of the SE 1/4 of Section 13 and the SE 1/4 of SE 1/4 of Section 24, is reasonable and appropriate, and will constitute a USP under Order No. (A) 14-9-94.

6. Paragraph 8, Determination and Order, of Order No. 14-9-94 provides for exceptions to the spacing and location requirements.

I find an exception to Order No. (A) 14-9-94 is warranted to provide for the distance between the Malpas D2-35 and D3-35 wells being less than 1,320 feet.

7. Petitioner's engineer testified:

- a. The bottom hole locations of future wells will not be less than 1,320 feet from other bottom hole locations.
- b. The bottom hole location of future wells will not be closer than 330 feet to the proposed USP boundary.
- c. Well density within the proposed USP will not be less than eighty (80) acres per well.

I find additional wells may be necessary to adequately and efficiently drain the proposed USP. After the operator has gathered and analyzed sufficient production and test data from the existing wells, if additional wells are

needed to adequately and efficiently drain the proposed USP, then such wells may be located and drilled consistent with this order and consistent with all other applicable statutory and regulatory requirements. Under no circumstances shall well density greater than one well per 80 acres be drilled on the proposed USP area.

8. Petitioner requested the use of a surface acreage basis to share production and to allocate well costs in the proposed USP. Petitioner's engineer testified that while one Antrim well may produce gas at a higher rate than another well in the proposed USP, this does not mean there is more gas beneath the higher rate well.

I find allocation based upon surface acreage is the fairest and most equitable way to allocate to the various tracts in the USP each tract's just and equitable share of USP production and costs.

9. Petitioner's landman testified all interests in the proposed USP were subject to effective oil and gas leases held by Petitioner except for the following:

<u>Name</u>	<u>Exhibit 4 Tract No.</u>	<u>Net Mineral Acreage</u>
Timothy E. & Victra L. Baker	C12	1.60
Donald E. & Merilynn Brownell	C14	0.94
Rex A. & Donna L. Brownell	C14	0.94
Martha J. Taylor	C15	0.33
Martha J. Taylor	C16	0.20
Rex A. & Donna L. Brownell	C17	13.13
Martha J. Taylor	C18	0.20
Martha J. Taylor	C19	0.33
John M. McDonald Trust	C20	9.47
Martha J. Taylor	C21	0.26
Neil C. & Norma A. Misner	C24	1.00
Daniel Philip & Joanne L. Cote	E5	40.00
John S. Russell	F3	<u>40.00</u>
TOTAL		108.40

Petitioner's landman testified that Petitioner has made a diligent effort to obtain oil and gas leases covering the unleased interests.

I find Petitioner was unable to obtain leases for purposes of voluntary pooling. I find compulsory pooling of unleased interests is necessary to

prevent waste and prevent the drilling of unnecessary wells, and that the unleased tracts described above should be pooled into the proposed USP.

10. I find the proposed USP will prevent waste, will prevent the drilling of unnecessary wells, and will permit each owner of an interest within the proposed USP the opportunity to receive their just and equitable share from the production therefrom.

11. I find all necessary conditions for forming a proposed USP and pooling all interests are satisfied and all interior drilling unit boundaries may be abrogated.

12. I find Petitioner should be named operator of the proposed USP.

13. Petitioner's Exhibit 9 sets out the estimated costs for drilling one Antrim well in the proposed USP. Petitioner's engineer testified the estimated dry hole costs were \$77,080.00, the completion costs were \$83,950.00, and the equipping costs were \$56,215.00. The estimated cost associated with drilling an Antrim well, including its proportionate share of facility costs, totals \$217,245.00. Petitioner asked that actual and not estimated costs be used for purposes of computation of the additional compensation to be recovered from nonparticipating owners which should be allowed for the risk associated with this Antrim project.

I find this approach is appropriate, and accordingly, I find that a fair and equitable method of sharing costs with nonparticipating owners for drilling, completing and equipping the wells is on an actual cost basis, and the actual cost basis shall be used for purposes of computing compensation for the risk associated with the project.

14. Petitioner's engineer testified regarding the risks associated with drilling, completing and equipping Antrim wells in the proposed USP. Based on the results of the drilling of wells in the USP Area, and their present production levels, he testified that the likelihood of successful drilling of Antrim wells was high; however, the likelihood of these wells being economically successful depends upon the volume of gas the wells produce. Economic success will not be known for many years. The production of gas from the Antrim is dependent upon the presence of natural fractures which connect to the well bore. Not all Antrim wells in the same project will produce at the same rate because each may not encounter comparable fracturing. Some wells in an Antrim project may not produce a sufficient amount of gas to be economical on their own. In a producing area there exists the possibility that, due to glacial gouging, the Antrim may not be present, resulting in a dry hole.

I find in determining the risk associated with Antrim operations, it is necessary to consider not only the likelihood of the well being completed as a producible well, but also the likelihood of the well being economically successful.

15. Petitioner's engineer sponsored Exhibit 11, an economic analysis of the impact on the operator of carrying unleased interests. It illustrates the costs to the operator for furnishing the money necessary to pay the unleased owner's proportionate share of drilling, completing and equipping expenses. Petitioner argued that the operator of the USP should receive sufficient compensation to cover a reasonable rate of return on the cost of the money it advances to pay the unleased owner's proportionate share of expenses, both for wells already drilled and for wells to be drilled in the future in the proposed USP.

16. Based on the testimony the Petitioner requested an additional 200 percent of drilling costs, 200 percent of completion costs and 200 percent of surface equipment costs be assessed to a nonparticipating owner's interest, as compensation to Petitioner for the risk of the project being uneconomical. Petitioner requested such compensation be assessed on the drilling, completing and equipping costs of the seventeen (17) wells drilled before the date of this Order, and on all future wells.

17. I find that it is necessary to consider the cost to Petitioner for money advanced to pay the unleased owner's proportionate share of expenses. However, I find that it is not reasonable to apply additional compensation for the costs of wells drilled prior to the establishment of the USP.

18. I find that the Antrim wells drilled prior to the formation of the proposed USP were drilled on legal drilling units. I find that the mineral interests in the drilling units at the time the wells were drilled were responsible for bearing the risks of the project being uneconomical. I find the unleased interests within the boundary of the proposed USP could not anticipate inclusion in the proposed USP prior to its establishment. I find it is not just and equitable to allocate additional compensation for risks of the project being uneconomical or for costs to the operator for advancing the unleased owner's share of expenses on wells drilled prior to the formation of the proposed USP to those interests pooled into the proposed USP by Order of the Supervisor. I find in fact that it is just and equitable that each interest pooled into the USP by Order of the Supervisor bear its proportionate share of the actual costs of drilling, completing and equipping the Antrim wells drilled prior to the formation of the proposed USP.

19. I find the appropriate compensation from a nonparticipating owner for risks of the project being uneconomical and for costs to the operator for advancing the unleased owner's share of expenses should be 200 percent of actual drilling costs, actual completion costs and actual equipping costs, incurred after the effective date of this Order. Operating costs are not subject to additional compensation for the risk of the project and shall be allocated based upon the proportion that a nonparticipating party's acreage in the proposed USP bears to the total acreage in the proposed USP.

CONCLUSIONS OF LAW

1. Section 15, Findings of Fact of Order No. (A) 14-9-94, determined as a matter of fact:

[B]ecause of the uniqueness of the Antrim and the manner in which it is developed, a large development area which is approved by the Supervisor can be considered a "pool" as defined in Act 61.

2. Section 17, Findings of Fact of Order (A) 14-9-94 found in part:

[T]o prevent waste, an operator should have the flexibility, other than the more rigid 80-acre drilling units, to develop a USP based on the following criteria:

- a. That it is developed using contiguous (common side) 40-acre building blocks;
- b. That it consists of voluntarily or compulsory pooled tracts all under the operator's control.

3. Section 4, Conclusions of Law of Order No. (A) 14-9-94 held as a matter of law:

[A]n area developed under a Uniform Spacing Plan (USP) can be considered a "pool" pursuant to Act No. 61.
"Pool" means an underground reservoir containing a common accumulation of oil or gas or both. MCL 319.2(d)

4. The Supervisor determined in Section 4(G), Determination and Order of Order No. (A) 14-9-94, that:

An operator having unleased mineral interests within a proposed USP may utilize the compulsory pooling provisions in Section 13 of Act No. 61 by petitioning for a hearing.

5. Section 61513 of Part 615 of the NREPA provides in part:

The pooling of properties or parts of properties is permitted, and if not agreed upon, the Supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool.
[MCL 324.61513]

6. Section 8, Determination and Order, of Order No. (A) 14-9-94 provides that exceptions to the requirements of USPs may be granted after notice and hearing.

7. Petitioner argues that it is entitled as a Matter of Law to compensation for the risk associated with drilling a dry hole on Antrim Shale Formation wells drilled prior to formation of the USP. Petitioner relies on language in R 342.1206(4)(b), which states:

(b) As to each well that the owner does not elect to participate in as provided in subdivision (a) of this subrule, if the well has been, or is subsequently, completed as a producer, authorize the operator of the well to take out of the nonparticipatory interest's share of production from the well the party's share of the costs of drilling, completing, equipping, and operating the well plus an additional percentage of the costs that the supervisor considers appropriate compensation for the risks associated with drilling a dry hole and the mechanical and engineering risks associated with the completion and equipping of each well. [1996 MR 9, R 324.1206(4)(b), emphasis added]

Plain reading of the above language indicates that on a well drilled prior to the formation of the USP, the allocation of compensation for risk associated with drilling a dry hole on a well previously drilled on a legal drilling unit is permissible. However, the above language cannot be read in isolation from the entirety of R 324.1204(4), which begins:

After a hearing on a petition for an order to pool and after thorough consideration of the evidence and testimony presented, the supervisor shall either rule that pooling is not necessary to prevent waste or shall enter an order pooling the separately owned tracts and interests within the drilling unit. . . [1996 MR 9, R 324.1206(4), emphasis added]

Considering the emphasized language, it is evident that R 324.1206(4) applies only to allocation of compensation for risk associated with a dry hole drilled on a drilling unit formed by compulsory pooling. I conclude as a Matter of Law that R 324.1206(4) does not apply to situations of compulsory pooling to form USP's but only to compulsory pooling to form legal drilling units.

I also conclude as a Matter of Law that each interest compulsory pooled into the proposed USP as a result of a Supervisor's Order shall bear its proportionate share of the actual costs of drilling, completing, equipping and operating a well drilled on the proposed USP prior to the compulsory pooling. [MCL 324.61513(4)]

8. The Supervisor has jurisdiction over the subject matter and the persons interested therein. Due notice of the time, place and purpose of the hearing was given as required by law and all interested parties were afforded an opportunity to be heard.

DETERMINATION AND ORDER

On the basis of the Findings of Fact and Conclusions of Law, the Supervisor of Wells determines the formation of the USP is appropriate, and pooling to form a full USP is necessary to prevent waste and to prevent the drilling of unnecessary wells.

NOW, THEREFORE, IT IS ORDERED:

1. A Uniform Spacing Plan is established covering the following lands:

SW 1/4 of SW 1/4 of Sec. 13; SW 1/4 of Sec. 14; all of Sec. 23; NW 1/4 of Sec. 24; NW 1/4 of Sec. 25; all of Sec. 26; and all of Sec. 35, T31N, R6W, Jordan Township, Antrim County, Michigan.

The USP contains 2,440 acres.

2. O.I.L. Energy Corp. is appointed as operator of the USP and shall have control of all operations in the USP.

3. All interior drilling unit boundaries established prior to the date of this Order either by Administrative Rule 1979 AC, R 299.1201, 1996 MR 9, R 324.301, or by Order No. (A) 14-9-94 are abrogated.

4. This Opinion and Order applies only to the Antrim as defined in Section 2, Findings of Fact, Order No. (A) 14-9-94, which is incorporated here by reference.

5. All properties and parts of properties and unleased interests in the Antrim within the area of the USP are pooled; the pooling is solely for the purpose of forming a full USP and does not convey a right to operate on the surface of unleased land.

6. If a nonparticipating party has not, before the effective date of this Order, voluntarily agreed with Petitioner on a plan for development of the USP, said party shall have ten (10) days from the effective date of this Order to elect one of the following alternatives and advise the Supervisor of Wells, in writing, accordingly:

a. Pay to the Operator the nonparticipating party's share of the cost of drilling, completing and equipping all wells heretofore and hereafter drilled, completed and equipped in the USP Area, or give bond for his, her or their share of such costs, for payment promptly upon completion, whether the wells are drilled as producers or dry holes; or

b. If within ten (10) days after the effective date of this order the nonparticipating owners do not pay their proportionate share of costs heretofore incurred and their proportionate share of estimated future costs or give bond therefore, authorize Petitioner to take from the nonparticipating owners' $7/8$ share of production:

(i) The nonparticipating owners' proportionate share of the actual costs incurred for drilling, completing and equipping all Antrim wells drilled heretofore and hereafter in the USP;

(ii) An additional 200 percent of the costs attributable to the nonparticipating owners' proportionate share for drilling, completing and equipping Antrim wells in the USP applied only to such costs as are incurred after the effective date of this order, as compensation to the Petitioner for the risks associated with the project;

(iii) The actual costs of operating the Antrim wells attributable to the nonparticipating owners' proportionate share.

One-eighth (1/8) of the nonparticipating owners' proportionate share shall be paid as royalties and shall be free of all costs.

7. Operating costs are not subject to additional compensation for the risk of a dry hole.

8. In the event a nonparticipating owner fails to notify the Supervisor of Wells of a decision within ten (10) days from the effective date of this Order, the nonparticipating owner so failing shall be deemed to have elected the alternative described in paragraph 6b of the Determination and Order section above, and the operator may proceed with the drilling, completing, equipping and operating of wells in the USP on that basis. The unleased mineral interest of the nonparticipating owner shall be treated as a working interest owner to the extent of 7/8 of the pooled interest and shall be treated as a royalty interest to the extent of 1/8. This 1/8 royalty interest shall be free of any withholding for contribution for drilling, completing, equipping costs and operating costs, including post production costs.

9. For purposes of electing alternatives, the amount of \$217,245.00 is fixed for the estimated cost of drilling, completing, and equipping one well within the USP; however, actual costs shall be charged.

10. Production and costs of the USP shall be allocated on a surface acreage basis. Each tract shall share in the proportion its acreage bears to the total acreage in the USP.

11. Within two years from the date of this Order, the SE 1/4 of Section 13 may be included in the USP if the operator demonstrates to the satisfaction of the Supervisor that such inclusion is necessary to effect efficient development and will prevent waste, and an Antrim well is drilled upon the tract. The Supervisor may choose to add the SE 1/4 of Section 13 to the USP without a hearing.

12. The Supervisor retains jurisdiction over this matter. Any amendments to the boundary of the USP other than that specified in Paragraph 11 of this Order shall be by Order of the Supervisor after notice to all interested parties.

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13. An exception to the requirement of Order No. (A) 14-9-94 that all wells must be located at least 1,320 feet apart is established for the Malpas D2-35 and D3-35 wells.

14. The effective date of this Order shall be September 5, 1997.

Dated: 8-22-97


HAROLD R. FITCH
ASSISTANT SUPERVISOR OF WELLS